

No. 15634

United States
Court of Appeals
for the Ninth Circuit

CONFIDENTIAL, INC., a Corporation,

Appellant,

vs.

EDMUND G. BROWN, Attorney General, State of
California, et al.,

Appellees.

Supplemental
Transcript of Record

Appeal from the United States District Court for the
Southern District of California
Central Division.

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PAUL P. O'BRIEN, C



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States District Court in and for the Southern District of California, Central Division

No. 725-57—HW

CONFIDENTIAL, INC., a New York Corporation,
Plaintiff,

vs.

EDMUND G. BROWN and CLARENCE A. LINN,
Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF
LAW ON DENIAL OF PRELIMINARY IN-
JUNCTION

This cause came on for hearing on June 17, 1957, on the plaintiff's motion for a preliminary injunction and the court having considered the verified complaint and affidavits of the plaintiff and the affidavit presented by the defendants finds the facts and states the conclusions of law as follows:

Findings of Fact

I.

(a) That it is true that at all times mentioned in the complaint in this action the defendants Edmund G. Brown and Clarence A. Linn were and now are respectively the Attorney General and Assistant Attorney General of the State of California.

(b) That on May 15, 1957, the Grand Jury of the County of Los Angeles returned an indictment

charging Confidential, Inc., Whisper, Inc., Publishers Distributing Corporation, and others with the commission of a felony, to wit, conspiracy to violate the laws of the State of California forbidding publication of lewd, obscene and/or libelous matter.

II.

That it is not true that on or about May 29, 1957, the defendants Edmund G. Brown and Clarence A. Linn caused to be published in a newspaper of general circulation in the State of California a statement to the effect that the Attorney General's office will ban the distribution of "Confidential" magazine commencing with the issue due for distribution on June 20, 1957.

III.

That it is true that on or about May 29, 1957, defendant Clarence A. Linn with the consent and authority of defendant Edmund G. Brown, communicated with Publishers Distributing Corporation of New York, the California distributor of "Confidential" magazine, and alleged that he was the Assistant Attorney General of California and that "Confidential" magazine contained libelous and obscene matter which violated California Statutes and that said distributing company and its officers would be criminally prosecuted if the magazine was thereafter placed for sale in California.

IV.

That it is true said distributor refuses and does still refuse to distribute or place said magazine for sale in the State of California.

V.

That the plaintiff has failed to establish any probable right which may be defeated if the preliminary injunction is not issued.

VI.

That the court has taken judicial notice of the public interest in allowing the defendants to proceed to enforce the laws of the State of California and finds that the authority asserted by the defendants to execute laws of the State of California is an authority in which the public has a vital interest, which interest might be defeated if the preliminary injunction prayed for were granted.

Conclusions of Law

I.

That the defendants Edmund G. Brown and Clarence A. Linn acted within the scope of their authority as Attorney General and Assistant Attorney General of the State of California, respectively, and pursuant to the laws and Constitution of the State of California, and the Constitution of the United States, in declaring that "Confidential" magazine contains lewd, obscene and libelous matter, and in threatening the publisher, distributor, wholesalers and vendors of said magazine with criminal prosecution or Grand Jury investigation if they distribute or sell same in the State of California.

II.

That a preliminary injunction shall not issue for the purpose of restraining the defendants Edmund

G. Brown and Clarence A. Linn from declaring as Attorney General and Assistant Attorney General of the State of California that "Confidential" magazine has contained matter which is lewd, obscene and libelous, and threatening the publisher, distributor, wholesalers and vendors of said magazine with criminal prosecution or Grand Jury investigation if they distribute or sell same in the State of California, copies of said magazine which contain lewd, obscene and libelous matter.

Dated: July 8th, 1957.

/s/ HARRY C. WESTOVER,
United States District Judge.

[Endorsed]: Filed July 8, 1957.

United States District Court in and for the Southern District of California, Central Division

No. 725-57—HW

CONFIDENTIAL, INC., a New York Corporation,
Plaintiff,

vs.

EDMUND G. BROWN and CLARENCE A. LINN,
Defendants.

ORDER GRANTING MOTION
TO DISMISS

The Motion to Dismiss the above-entitled action duly came on for hearing on the 8th day of July, 1957.

The Court having heard arguments of counsel for the respective parties and having determined that the defendants, Edmund G. Brown and Clarence A. Linn, acted within the scope of their powers as Attorney General and Assistant Attorney General of the State of California, respectively, in all acts and matters set forth in the Complaint on file herein and are, therefore, immune from civil suit relating to such acts and matters.

It Is Ordered that plaintiff's action be and the same is hereby dismissed for failure to state a claim upon which relief can be granted.

Dated: July 11th, 1957.

/s/ HARRY C. WESTOVER,
United States District Judge.

Approved as to form:

.....,
Attorneys for Defendants.

Affidavit of service by mail attached.

Lodged July 10, 1957.

[Endorsed]: Filed July 11, 1957.

Entered July 12, 1957.

[Title of District Court and Cause.]

No. 725-57—HW

NOTICE OF APPEAL TO CIRCUIT
COURT OF APPEALS

Rule 73(b) and USC Title 28, Section 1292

Notice Is Hereby Given that plaintiff, Confidential, Inc., hereby appeals to the Circuit Court of Appeals for the 9th Circuit from the order made in this action denying the preliminary injunction, which order was entered in the docket on July 9, 1957, and from the order and judgment dismissing this action which was entered on the docket on July 12, 1957.

ARTHUR J. CROWLEY and
BEN LEVIN,

By /s/ ARTHUR J. CROWLEY,
Attorneys for Plaintiff and
Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed July 15, 1957.